

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JENNIFER McCALLSON, an individual,  
Plaintiff,  
vs.

JOELLE G. PERRY, an individual, DOE  
1, personal representative of the estate of  
Frederick Perry deceased, HARTFORD  
LIFE INSURANCE COMPANY, DOES  
2 through 20, inclusive,

Defendants

CASE NO. 10cv1831 WQH (RBB)  
**ORDER**

HAYES, Judge:

The matter before the Court is the Stipulation Re: Good Faith Settlement [California Code of Civil Procedure Section 877.6] (ECF No. 24).

**BACKGROUND**

On September 3, 2010, this case was removed from the San Diego County, Superior Court of California. (ECF No. 1). On December 29, 2010, Plaintiff Jennifer McCallson (“McCallson”) and Defendants Joelle Perry (“Perry”) and the personal representative of the Estate of Frederick Perry (“Estate of Frederick Perry”) filed a Stipulation Re: Good Faith Settlement [California Code of Civil Procedure Section 877.6] (ECF No. 24).

The parties have attached a copy of the Mediation Settlement Agreement (“settlement agreement”) to the Stipulation as Exhibit A. The settlement agreement provides as follows:

1 “Defendant shall pay to Plaintiff \$150,000 cash, plus interest thereon actually earned after the  
 2 date of this Agreement ....” *Id.* at 6. “Defendant shall proceed to market and sell the single  
 3 family house commonly known as 1925 Morello Ave., Pleasant Hill, CA 94523 ... [t]he sum  
 4 of \$125,000 shall be due and payable By Defendants to Plaintiff ... promptly upon closing of  
 5 sale of the Pleasant Hill Property ....” *Id.* “Defendant shall pay to Plaintiff, not later than 90  
 6 days after close of escrow on sale of the Pleasant Hill Property, an additional \$150,000 cash  
 7 ....” *Id.* at 7. Defendant shall pay to Plaintiff, not later than April 24, 2012, a final sum of  
 8 \$50,000 cash ....” *Id.* “Defendant will grant Plaintiff a deed of trust with non-judicial power  
 9 of sale on the property commonly referred to as 2570 Damon Rd., Carson City, Nevada 89701  
 10 ... in the amount of \$150,000 subject to foreclosure proceedings only if the Pleaant Hill  
 11 Property has been sold and the \$150,000 due thereafter is not paid within 90 days of close of  
 12 escrow ....” *Id.* “Promptly upon payment of the \$150,000 after sale of the Pleasant Hill  
 13 Property, Defendant will grant Plaintiff a further deed of trust with non-judicial power of sale  
 14 on the Nevada Property in the amount of \$50,000. Plaintiff shall subordinate the \$50,000 deed  
 15 of trust to a senior encumbrance for the sole purpose of securing financing used exclusively  
 16 to pay Plaintiff under this Agreement” *Id.* at 7-8. “Plaintiff and Defendant shall each bear  
 17 their own attorney fees and costs.” *Id.* at 8. “It is understood that this is a full and final release  
 18 of any and all claims ....” *Id.*

19       The Stipulation provides: “the settlement is contingent upon a determination that the  
 20 settlement is in good faith pursuant to California code of Civil Procedure section 877.6 ” *Id.*  
 21 at 2. “[T]he settlement was the product of arms-length, informed negotiations.” *Id.* “The  
 22 terms of the settlement, including the amount thereof, are adequate and reasonable.” *Id.* “There  
 23 is no evidence of fraud or collusion by and among McCallson and Perry aimed at harming  
 24 Hartford.” *Id.* “The amount of the settlement relative to the proportionate potential liability  
 25 of Perry and the approximate total potential recovery of Jennifer McCallson is fair.” *Id.*

26       The parties filed Proof of Service that on December 29, 2010, the parties to this action  
 27 were served by mail with the Stipulation Re: Good Faith Settlement [California Code of Civil  
 28 Procedure Section 877.6] and Proposed Order. (ECF No. 24-1 at 2). To date, no party has

1 filed any motion to contest the good faith of the settlement between Plaintiff McCallson and  
 2 Defendants Perry and the Estate of Frederick Perry .

3 **DISCUSSION**

4 Section 877.6 of the California Code of Civil Procedure provides:

5 [A] settling party may give notice of settlement to all parties and to the court,  
 6 together with an application for determination of good faith settlement and a  
 7 proposed order. The application shall indicate the settling parties, and the basis,  
 8 terms, and amount of the settlement. The notice, application, and proposed  
 9 order shall be given by certified mail, return receipt requested. Proof of service  
 10 shall be filed with the court. Within 25 days of the mailing of the notice,  
 application, and proposed order, or within 20 days of personal service, a  
 nonsettling party may file a notice of motion to contest the good faith of the  
 settlement. If none of the nonsettling parties files a motion within 25 days of  
 mailing of the notice, application, and proposed order, or within 20 days of  
 personal service, the court may approve the settlement.

11 Cal. Code. Civ. Proc. § 877.6(a)(2).

12 When making a determination that a settlement was made in good faith pursuant to  
 13 section 887.6(a)(2), a court considers the following: (1) the amount of the settlement; (2) a  
 14 rough approximation of plaintiff's total recover and the settlers proportionate liability; (3)  
 15 allocation of settlement proceeds among the plaintiff's settlement; (4) the settlers financial  
 16 condition and insurance limits; (5) evidence of fraud or collusion; and (5) a recognition that  
 17 a settler should pay less in settlement than he would if he were found liable at trial. *Tech-Bilt,*  
 18 *Inc. v. Woodward-Clyde & Associates*, 38 Cal. 3d 488, 499-500 (1985).

19 More than 25 days have passed since the mailing of the Stipulation and Proposed Order,  
 20 and none of the nonsettling parties have filed a motion to contest the good faith of the  
 21 settlement. Based on the non-opposition of any party to this action, and the Court's review of  
 22 the settlement agreement between Plaintiff McCallson and Defendants Perry and the Estate of  
 23 Frederick Perry and review of the factors articulated in *Tech-Bilt*, 38 Cal. 3d 488, the Court  
 24 finds that the settlement between Plaintiff McCallson and Defendants Perry and the Estate of  
 25 Frederick Perry was made in good faith.

26 **IT IS HEREBY ORDERED** that the Stipulation Re: Good Faith Settlement [California  
 27 Code of Civil Procedure Section 877.6] (ECF No. 24) is **GRANTED**. The Court determines  
 28 that the settlement between Plaintiff McCallson and Defendants Perry and the Estate of

1 Frederick Perry was made in good faith and approves the settlement, pursuant to California  
2 Code of Civil Procedure section 877.6(a)(2).

3 DATED: February 9, 2011  
4

*William Q. Hayes*

5 **WILLIAM Q. HAYES**  
6 United States District Judge

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